

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
LAND USE COMMITTEE AGENDA  
TUESDAY, NOVEMBER 15, 2011

7:00 PM  
Aldermanic Chamber

*Public Hearings will be held on the following items; after which the Committee will convene a working session in room 222.*

#271-11      NEWTON COMMUNITY SERVICE CENTER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive 19 parking spaces in order to convert its current use to office space in anticipation of the sale of its building at 429 CHERRY STREET, Ward 3, West Newton, on land known as SBL 33, 12, 12, containing approximately 13,398 sq. ft. of land in district zoned Business 1. Ref: Sec 30-24, 30-23, 30-19(d)(11), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

*N.B. Please see attached letter requesting to withdraw the petition without prejudice.*

#282-11      RICHARD D. SEWALL petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow four attached dwellings in two buildings; to waive the side setback requirement; and to allow a lot coverage of more than 25% at 87-89 WABAN STREET, Ward 1, on land known as SBL 12, 4, 27, containing approximately 20,082 sq. ft. of land in a district zoned Multi Residence 1. Ref: Sec 30-24, 30-23, 30-(9)(b)(5), 30-9(b)(5)b) of the City of Newton Rev Zoning Ord, 2007.

#283-11      VLADIMIR KHAYNOVSKY petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE by enclosing an existing deck to create a bedroom increasing the Floor Area Ratio from .70 to .73 at 66 CRAGMORE ROAD, Ward 5, Newton Upper Falls, on land known as SBL 54, 48, 18, containing approximately 12,580 sq. ft. of land in a district zoned Single Residence 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15(u)(2) of the City of Newton Rev Zoning Ord, 2007.

#137-10(3)      SHARAD S. GANDBHIR petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure and to allow three parking spaces in the front setback and less than five feet from the front lot line at 298-300 ADAMS STREET, Ward 1, on land known as Sec 12, Blk 2, Lot 9C, containing ≈11,529 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-9(h)((1), 30-19(g)(1) and (m) of the City of Newton Rev Zoning Ord, 2007.

- #277-10(2) REQUEST FOR A ONE-YEAR EXTENSION OF TIME in which to EXERCISE  
Special Permit #277-10 granted on December 20, 2010 to JENNIE MARIE ONE  
LLC/JENNIE MARIE TWO LLC to demolish an existing single-family dwelling  
and construct a mixed-use development containing 5 two-bedroom dwelling units  
over 2, 997 sq. ft. of retail space with a 21-space rear-yard parking lot (accessed  
by Cottage Court) at 152 ADAMS STREET, Ward 1, Nonantum. Ref: Sec. 30-  
24(c)(4) of the City of Newton Rev. Zoning Ord, 2007.

*N.B. Please see attached letter.*

2012 Class 2 Auto Dealer Licenses

- #301-11 AUBURNDALE SERVICE CENTER, LLC d/b/a AUBURNDALE MOBIL  
2105 Commonwealth Avenue  
Auburndale 02466
- #303-11 AUTO EUROPA, INC.  
38 Ramsdell Street  
Newton Highlands 02461
- #306-11 GLOBAL VENTURES GROUP  
d/b/a LUX AUTO PLUS  
1197-1201 Washington Street  
West Newton 02465
- #309-11 LIFT THROTTLE AUTOMOTIVE  
26 Shepherd Park  
Waban 02468
- #310-11 MAP DEVELOPMENT & INVESTMENTS  
d/b/a ALBEMARLE MOTORS INC.  
175 North Street  
Newtonville 02460
- #313-11 NEWTON CENTRE SHELL, INC.  
1365 Centre Street  
Newton Centre 02459
- #314-11 NEWTON TRADE CENTER  
103 Adams Street  
Nonantum 02458
- #315-11 OLD TIME GARAGE LTD.  
1960 Washington Street  
Newton Lower Falls 02462
- #319-11 ROBERT'S TOWING, INC.  
926r Boylston Street  
Newton Highlands 02461

Respectfully submitted,  
Ted Hess-Mahan, Chairman



Setti D. Warren  
Mayor

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Candace Havens  
Director

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**MEMORANDUM**

Public Hearing Date:	November 15, 2011
Land Use Action Date:	November 21, 2011
Board of Aldermen Action Date:	December 5, 2011
90-Day Expiration Date:	December 19, 2010

DATE: November 10, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner Current Planning ET  
Alexandra Ananth, Senior Planner

SUBJECT: PETITION # 282-11, RICHARD D. SEWALL for SPECIAL PERMIT/SITE PLAN APPROVAL to allow four attached dwellings in two buildings; to waive the side setback requirement; and to allow a lot coverage of more than 25% at 87-89 WABAN STREET, Ward 1, on land known as SBL 12, 4, 27, containing approximately 20,082 sq. ft. of land in a district zoned Multi-Residence 1. Ref: Sec 30-24, 30-23, 30-(9)(b)(5), 30-9(b)(5)b) of the City of Newton Rev Zoning Ord, 2007.

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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



### **EXECUTIVE SUMMARY**

The subject property is located at 87-89 Waban Street and consists of a 20,082 square foot lot. The site is improved with a two-family residence in deteriorating condition. The lot also contains a detached garage and is located in a Multi-Residence 1 district.

The petitioner is proposing to demolish an existing addition to the rear of the existing structure and to reconfigure and add onto the dwelling to create two attached dwelling units connected by a four-car garage. The petitioner is also proposing to construct a new building with two additional attached dwelling units also connected by a garage, for a total of four attached dwellings on the lot in two separate buildings.

The petitioner must seek relief to allow four attached dwellings in two buildings, to allow side setbacks of 10 and 15.5 feet where 25 feet is required, and to allow lot coverage of 27.7% where only 25% is allowed.

The Planning Department is pleased that the petitioner is proposing to preserve the original structure as part of the project. However, we are concerned that four units and associated parking facilities may make the lot feel too dense for this neighborhood and may negatively impact abutters. Newton's *Comprehensive Plan* encourages the rehabilitation of historically significant structures; however, the proposed height and density of new construction appear to detract from the original structure rather than complement it. The Planning Department suggests the petitioner consider lowering the height of any proposed new units so that they appear subordinate to the original historic structure, and limiting the number of units to three attached dwellings in one building so as not to overwhelm the existing house and immediate abutters.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When reviewing this petition, the Board should consider whether:

- The site is an appropriate location for the proposed four-unit attached dwelling use and structures and whether the use as developed and operated will adversely affect the neighborhood.
- The location and configuration of structures and the relationship of the site's structures to nearby structures is appropriate and in keeping with the historic neighborhood.
- The design and location of access driveways are appropriate to the site and neighborhood.
- The disruption or removal of historic resources (structures and trees) will be



minimized.

- The proposed waivers to the side setback requirements and lot coverage ratios are appropriate as literal compliance is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features.
- The petition is consistent with Newton's *Comprehensive Plan*.

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located in Newton Corner. The neighborhood of Waban Park was laid out as a mid-19<sup>th</sup> century neighborhood designed by Alexander Wadsworth who laid out Walnut Park, Washington Park, Webster Park and other similar neighborhoods with a central green space integral to their character. Many of the houses in the neighborhood were built prior to the invention of the automobile and do not have garages or driveways. Some of the houses that have later built garages access them from adjacent streets.

The neighborhood is zoned Multi-Residence 1. Much of the neighborhood was originally built with single-family residences that were later converted to two-family structures. Many of the surrounding homes are located on narrow lots with legally nonconforming side setbacks.

### B. Site

The site consists of a relatively level 20,082 square foot lot improved with a circa 1848 Italianate home originally occupied by George Lord, president of New England Mutual Insurance Company, and later by Frank A. Day, a wealthy banker and philanthropist. The F. A. Day School is named for Day due to his support of education in Newton. The house was one of the original residences built on Waban Street and was built in the Italianate style though it was later altered during the Colonial Revival period. The exterior of the house does not look to have been well maintained in recent years and has significantly deteriorated.

The property contains a garage, which is accessed via a driveway that is shared with the abutter to the west.

There is a large tree in the middle rear of the lot. The abutter to the east has a row of tall evergreens planted close to the lot line whose branches significantly encroach over the subject property.

### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The petitioner is proposing to convert the two-family residence to attached dwelling use with a total of four units in two separate buildings.

#### B. Building and Site Design

The proposed development includes four townhouse-style attached dwelling units in two separate buildings, with one of the units being the original residence constructed on this lot. The buildings are oriented so that they face each other with a proposed new driveway between the buildings. Both buildings are 2½ stories with a pitch-style roof with dormers for the proposed new construction. The entrance to the existing structure is oriented on the east side of the structure and the proposed new construction mimics this side entrance orientation so that the front doors of all four units face each other.

The proposed architecture of the new units nicely mimics the detail of the existing house and proposed materials are clapboard and asphalt shingle. However, the Planning Department is concerned that the proposed new construction is taller and wider than the existing house, detracting from the original historic structure. The Planning Department suggests the petitioner consider lowering the height of any proposed new units so that they appear subordinate to the original historic structure. Additionally, the petitioner should limit the width of proposed garages so that they do not protrude beyond the original structure, and consider limiting the number of units to three attached dwellings in one building so as not to overwhelm the existing house and immediate abutters.

It should be noted that the petitioner submitted revised plans to the Planning Department since the Zoning Review Memorandum was completed and some of the details have changed. Nevertheless, the Planning Department notes there appears to be a number of errors, omissions, and inconsistencies on plans submitted for the special permit. The site plan shows a building height of 34.5 ft. above the average grade plane though it is not clear if this refers to the existing structure or proposed new construction. Architectural plans show an existing building height of 27 feet and new construction height of 31 feet (to the peak) though these heights do not appear to be calculated correctly. Architectural plans indicate that the proposed new double loaded garage (4-car garage with access on both sides) located behind the original structure protrudes beyond this structure although this does not appear to be the case on submitted site plans. Conversations with the petitioner indicated there would be patios for the proposed new units, but plans only indicate a patio for one unit (Unit #2). There appear to be no walkways leading to the new residences and

curb-cuts and driveway aprons are not shown on the site plan. The proposed 12 foot driveway is indicated as pavers on the site plan although architectural plans refer to a bituminous driveway. Although the petitioner has submitted information on the size of the units and relative FAR for comparison purposes only (there is no maximum FAR threshold for attached dwellings) it does not appear these calculations reflect Newton's recent changes to the way FAR is calculated as no basement or attic space is included in the calculation, and it is not clear whether the garages are included as they should be.

In addition to the height of the proposed new units and the protruding garage, the Planning Department is concerned with the proposed side setback of 10 feet for the new building where 25 feet is required. Although many houses in this neighborhood are spaced close together these are legally nonconforming structures. The standard is much higher for new attached dwelling construction by special permit. It should be noted that the petitioners applied for a variance to the frontage requirement so that they might subdivide the lot into two separate lots, but were denied by the Zoning Board of Appeals in June 2011 (**SEE ATTACHMENT "A"**). The Planning Department is concerned the proposed new building may negatively impact the abutter to the east and may damage the trees planted on the abutter's property if constructed so close to the property line. The Planning Department also notes that the proposed new building is significantly set back from the street so that it does not appear to relate to the existing streetscape in any way.

As many residences on this block do not have curb cuts on Waban Street, the Planning Department encourages the petitioner to seek a design that utilizes the existing driveway on-site rather than adding an additional curb cut to the narrow lot and removing valuable street parking. Perhaps the petitioner should consider reducing the proposed number of units from four to three in an L-shaped configuration with parking in the rear via the existing curb cut in order to minimize impacts on immediate abutters. Depending upon how it is designed, this may also reduce the need for waivers to the side setback requirements and lot coverage ratios.

C. Parking and Circulation

The Planning Department is concerned with the proposed additional curb cut on this site when many lots in the immediate neighborhood have none. The Planning Department encourages the use of the existing shared driveway for access to the site if possible, and the elimination of surface parking between buildings.

D. Landscape Screening

The petitioner did not submit a tree removal or landscape plan with this petition. There is a significant tree located on this lot that will need to be removed and the Tree Preservation Ordinance will apply. The petitioner should meet with the

Director of Urban Forestry to discuss an appropriate tree replacement plan for this site prior to being scheduled for a Working Session.

#### IV. COMPREHENSIVE PLAN

Newton's *Comprehensive Plan* encourages the retention of historically significant structures and context-sensitive design, as well as incentives and partnerships to encourage preservation and adaptive reuse. The Planning Department commends the petitioner for proposing to preserve the original structure as part of the project. However, we are concerned that the project as proposed detracts from the original structure rather than complements it, and may negatively impact the neighborhood.

#### V. TECHNICAL REVIEW

##### A. Technical Considerations

The Zoning Review Memorandum, dated September 14, 2011 (**SEE ATTACHMENT "B"**), provides an analysis of the proposal with regard to zoning. Although revised plans were submitted to the Planning Department after the Zoning Review was completed and some of the details have changed the relief remains the same. The petitioner must seek relief to allow four attached dwellings in two buildings, to allow side setbacks of 10 feet and 15.5 feet where 25 is required, and to allow lot coverage of 27.7% where 25% is the maximum allowed.

##### B. Newton Historical Commission.

The petitioner applied to the Newton Historical Commission to demolish the existing house in May 2011 and the Commission placed a Demolition Delay on the property. The delay was waived with "Concept Plans" in September 2011, however, plans submitted with the special permit application do not match plans submitted to the Newton Historical Commission with respect to the height and width of the proposed new construction. If the Board approves this special permit based on the plans submitted the petitioner must either go back to the Commission with proposed new plans or wait out the delay before seeking a building permit.

##### C. Engineering Review.

The Associate City Engineer has reviewed proposed plans and raises a number of issues in his Memorandum, dated October 28, 2011 (**SEE ATTACHMENT "C"**). The petitioner should submit revised plans to the Engineering Division prior to being scheduled for a working session.

##### D. Fire Department Review.

The Assistant Fire Chief has reviewed proposed plans and raises a number of issues in his letter, dated November 7, 2011 (**SEE ATTACHMENT "D"**). He notes that no cars should be parked between Units #1 and #3 and that the area be kept free of any

obstruction such as snow.

#### VI. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioners are seeking the following reliefs:

- Section 30-9(b)(5) to allow four attached dwellings in two buildings;
- Section 30-9(b)(5)b to allow side setbacks of 10 feet and 15.5 feet where 25 feet is required; and
- Section 30-9)b)(5)b to allow a lot coverage of 27.7% where 25% is the maximum allowed.

#### VII. PETITIONERS' RESPONSIBILITIES

Prior to being scheduled for a working session the petitioner should consider reorienting the new construction and possibly reducing the number of units from four to three in order to minimize impacts on abutters. The petitioner should also submit revised plans to the Planning and Engineering Department clarifying all the issues raised. Additionally the petitioner should seek consistency between plans submitted for the special permit and plans approved by the Newton Historical Commission.

#### **ATTACHMENTS:**

- ATTACHMENT A:** ZONING BOARD OF APPEALS NOTICE OF DECISION  
**ATTACHMENT B:** ZONING REVIEW MEMORANDUM DATED SEPTEMBER 14, 2011  
**ATTACHMENT C:** ENGINEERING DIVISION REVIEW MEMORANDUM DATED OCTOBER 28, 2011  
**ATTACHMENT D:** FIRE DEPARTMENT LETTER DATED NOVEMBER 7, 2011  
**ATTACHMENT E:** ZONING MAP  
**ATTACHMENT F:** LAND USE MAP  
**ATTACHMENT G:** PROPOSED SITE PLAN, 87-89 WABAN ST.



Setti D. Warren  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

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### ZONING BOARD OF APPEALS

Sherri Lougee, Board Clerk

### NOTICE OF DECISION

A Public Hearing has been held with regard to the following petitions before the City of Newton Zoning Board of Appeals. The decisions were determined as follows:

- #11-11 from Gerald A. McDade, Trustee of the Waltham Street Funding Trust u/d/t dated May 23, 1996, 371 Waltham Street, Newton, MA, requesting a 7.5 foot variance from the frontage requirements of the Newton Revised Zoning Ordinances, Section 30-15, Table One, resulting in a frontage of 72.5 feet. **(Required frontage for new lots created after December 7, 1953 is 80 feet.)** The property is located in a Single Residence 3 District. **The petitioners' request for a variance from the frontage requirement was denied without prejudice, 3-2.**
  
- #12-11 from Robert Chin and Gail Chin, 186 Auburn Street, Newton, MA, requesting a variance to legalize the property as a two-family dwelling. The property is located in a Single Residence 2 District. **The petitioners' request for a variance to legalize the property as a two-family dwelling was granted, subject to conditions, 5-0.**
  
- #13-11 from Richard D. Sewall, P.O. Box 95092, Newton, MA, requesting a 22.00 foot variance for each parcel from the frontage requirements of the Newton Revised Zoning Ordinances, Section 30-15, Table One, for property located at 87-89 Waban Street, Newton, in order to subdivide a 20,082 parcel into two lots and construct a new two-family dwelling on the second lot, resulting in a frontage of 58 feet for each lot. **(Required frontage for new lots created after December 7, 1953 is 80 feet.)** The property is located in a Multi Residence 1 District. **The petitioners' request for a variance from the frontage requirement was denied, 4-1.**
  
- #14-11 from Sandra M. Snyder and Cecilia A. Snyder, 12 Turner Street, Newtonville, MA, requesting a variance to legalize an accessory dwelling unit. The property is located in a Multi Residence 1 District. **The petitioners' request for a variance to legalize the property as a two-family dwelling was denied, 5-0.**
  
- #4-11 from John B. Hollingsworth, 59 Standish Road, Wellesley, MA, requesting a variance of 2.0 feet from the maximum allowable height requirement for accessory buildings of the Newton Revised Zoning Ordinances, Section 30-15(m)(2), to legalize a garage at 373 Lexington Street, Newton, resulting in a height of 20.0 feet. **(Maximum allowable height for an accessory building is 18.0 feet.)** The property is located in a Single Residence 3 District. **The Board voted to grant petitioner's request to withdraw his variance application without prejudice, 5-0.**

**#8-10** from Ralph S. Robart, 28 Richardson Road, Newton, MA, appealing the Commissioner of the Inspectional Services Department's denial of a building permit at 32 Williams Street, Newton, for the construction of a two-family dwelling. The property is located in a Multi Residence 1 District. **The petitioners' appeal of the decision of the Commissioner of Inspectional Services was granted, 5-0. Therefore, the Board overturned the determination of the Commissioner of the Inspectional Services.**

**Any appeal of the above decisions must be made to the Superior Court within twenty (20) days of its filing with the City Clerk in accordance with Section 17 of the Massachusetts General Law, Chapter 40A.**

**Decision numbers 8-10, 4-11, 11-11, 12-11, 13-11 and 14-11 were filed on July 22, 2011.**



Setti D. Warren  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
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282-11  
Attachment "B"

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Candace Havens  
Director

## ZONING REVIEW MEMORANDUM

Date: Sept 14, 2011

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning ET

Cc: Terrence P. Morris, attorney representing applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: Request to allow the construction of four attached dwellings in two buildings and waive the required side setbacks and maximum permitted lot coverage

Applicant: Richard D. Sewall	
Site: 87-89 Waban Street	SBL: 12004 0027
Zoning: MR1	Lot Area: 20,082 square feet
Current use: Two-family dwelling	Proposed use: Four attached dwellings

### Background:

The property at 87-89 Waban Street is consists of a 20,082 square foot lot containing a two-family dwelling and a detached garage located in the MR1 zone. The applicant proposes to reconfigure and add onto the existing two-family dwelling to create two attached dwellings connected by two two-car garages and to construct a new building on the other side of the lot also containing two attached dwellings for a total of four attached dwellings in two groupings.

The following review is based on plans and materials submitted to date as noted below.

- Proposed site plan, signed and stamped by Frank Iebba, dated 8/29/11
- Existing site plan, signed and stamped by Frank Iebba, dated 5/25/11
- Architectural plans, signed and stamped by Ronald F. Jarek, undated, showing floor plans and elevations for the existing house and addition for units 1 and 2, and the new structure housing units 3 and 4.



**ADMINISTRATIVE DETERMINATIONS:**

1. The applicant proposes to construct four attached dwellings in two groupings, two per structure. Per the requirements of Section 30-9(b)(5), the applicant must obtain a special permit from the Board of Aldermen to allow the proposed use.
2. The property is in the MR1 zone and must comply with the dimensional standards of Section 30-15, Table 1 and Ordinance No. Z-91(see chart below).

MR1 Zone	Required/Allowed*	Existing*	Proposed
Lot Size	15,000 square feet	20,082 square feet	No change
Lot Area per Unit	4,000 square feet	n/a	5,020 square feet
Frontage	80 feet	116 feet	No change
Setbacks			
• Front	25 feet	27.2 feet	No change
• Side (Left)	25 feet	15.5 feet	<b>15.5 feet</b>
• Side (Right)	25 feet	54.9 feet	<b>10 feet</b>
• Rear	25 feet	63.0 feet	39.6 feet
Building Height	36 feet	34.8 feet	No change
Maximum Stories	2.5	2.5	No change
Max. Lot Coverage	25%	14%	<b>26.7%</b>
Min. Open Space	50%	74%	57.8%

\*The proposed attached dwellings use has higher dimensional requirements than for the existing two-family dwelling use.

3. Proposed site plan shows structures that do not conform to the dimensional requirements of Section 30-15 Table 1. Section 30-9(b)(5)b) allows the Board of Aldermen to grant exceptions to the dimensional controls in Section 30-15.
4. Per Section 30-19(d)(2), the parking requirement for attached dwellings is two per dwelling unit. For four dwelling units, a total of eight parking stalls would be required. The applicant's site plan shows a total of eight parking stalls, satisfying this requirement. As the parking stalls are located within or in front of separate garages dedicated to each dwelling, they do not qualify as a single parking facility.
5. The site is currently used as a two-family dwelling. The applicant proposes to add two additional dwelling units by special permit for a total of four dwellings. This increase does not trigger the inclusionary housing provisions of Section 30-24(f), which would apply to a residential project allowed by special permit that increases the number of existing units by more than two, per Section 30-24(f)(2).
6. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Use</i>	<i>Action Required</i>
§30-9(b)(5)	Allow four attached dwellings in two buildings	S.P. per §30-24
§30-9(b)(5)b)	Allow side setbacks of 10 feet and 15.5 feet where 25 feet is allowed	S.P. per §30-24
§30-9(b)(5)b)	Allow a lot coverage of 26.7% where 25% is allowed	S.P. per §30-24

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 87 Waban Avenue

Date: October 28, 2011

CC: Lou Taverna, PE City Engineer (via email)  
Linda Finucane, Associate City Clerk (via email)  
Eve Tapper, Chief Planner (via email)  
Alexandria Ananth, Sr. Planner (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*Topographic Plan  
87-89 Waban Street  
Newton, MA*

*Prepared by: Frank Iebba, PE PLS ~Essex Engineering & Survey Inc.  
Dated: August 29, 2011*

*Executive Summary:*

The plans submitted are un-clear and illegible; the line weight and graphic are un-clear and cannot be read. There is no topography on the plan, neither existing nor proposed. There is no benchmark or datum referenced. The plan is missing bearings on the property lines. It appears that the sanitary sewer for the new units is directly next to the water service which is totally unacceptable.

An existing overhead telephone wire is not shown on the plan, it is about 6' off the ground; is there an easement for this wire, will the wire stay. The wire seems to be in line with the proposed units [this needs to be clarified].

The plans do not indicate how drainage from the proposed development will be addressed; currently the existing driveway directs runoff to the neighbor's property. The engineer of record needs to design a system to capture and infiltrate the runoff from the proposal.

The engineer of record needs to address these issues and update the plans so that they can be understood.

Construction Management:

1. A construction management plan is needed for this project. At a minimum it must address the following: staging site for construction equipment, construction material, construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor.
2. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.

Drainage:

1. A drainage analysis needs to be performed based on the City of Newton's 100-year storm event of 6-inches over a 24-hour period. All runoff from impervious areas need to be infiltrated on site.
2. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
3. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowners Association.

Sewer:

1. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code. In order to verify the slopes and inverts of the proposed service connection, two manholes of the

existing sanitary sewer system need to be identified on the plan with rim & invert elevations. The crown of the service connection & the sewer man need to match.

2. The existing water & sewer services to the building shall be cut and capped at the main and be completely removed from the site and properly back filled. The Engineering Division must inspect this work; failure to having this work inspected my result in the delay of issuance of the Utility Connection Permit.
3. The new sewer service and/or structures shall be pressure tested or video taped after final installation is complete. Method of final inspection shall be determined solely by the construction inspector from the City Engineering Division. The sewer service will NOT be accepted until one of the two methods stated above is completed. A Certificate of Occupancy will not be recommended until this test is completed and a written report is received by the City Engineer. *This note must be added to the final approved plans.*

General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should

show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*

7. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.



Bruce A. Proia  
Chief

**CITY OF NEWTON, MASSACHUSETTS**  
**FIRE DEPARTMENT HEADQUARTERS**

**1164 Centre Street, Newton Center, MA 02459-1584**  
**Chief: (617) 796-2210 Fire Prevention: (617) 796-2230**  
**FAX: (617) 796-2239 EMERGENCY: 911**



Setti D. Warren  
Mayor

November 7, 2011

Alexandra Ananth  
Senior Planner  
City Of Newton  
Planning and Development Department

Dear Alexandra,

On Friday November 4, 2011 I sent you an Email concerning the proposed project at 87 Waban Park. I have taken a close look at the proposal and have a few reservations.

Although there is nothing in the plan that triggers the sprinkler law, there is a concern with rear access to unit # 2 and unit # 4. We normally require a width of 18 feet in order for us to operate our Ladder truck. As you can see, there is a bottleneck situation between unit #1 and unit #3. As noted on the plan, the driveway tapers down to 12 feet before widening in the rear. This situation could pose access problems in an emergency.

I would strongly urge that the developer guarantee that no parking would be allowed at any time in the area between Unit #1 and unit # 3. I would also seek assurance that this area be kept clear of snow or any other obstruction to the extent of its entire 12 foot width.

If I can be of any help to you as this project proceeds, please feel free to contact me.

Sincerely

Paul Chagnon

Assistant Chief  
Newton Fire Department

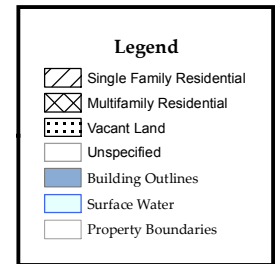






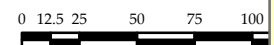
# 282-11 Land Use Map 87-89 Waban St.

*City of Newton,  
Massachusetts*



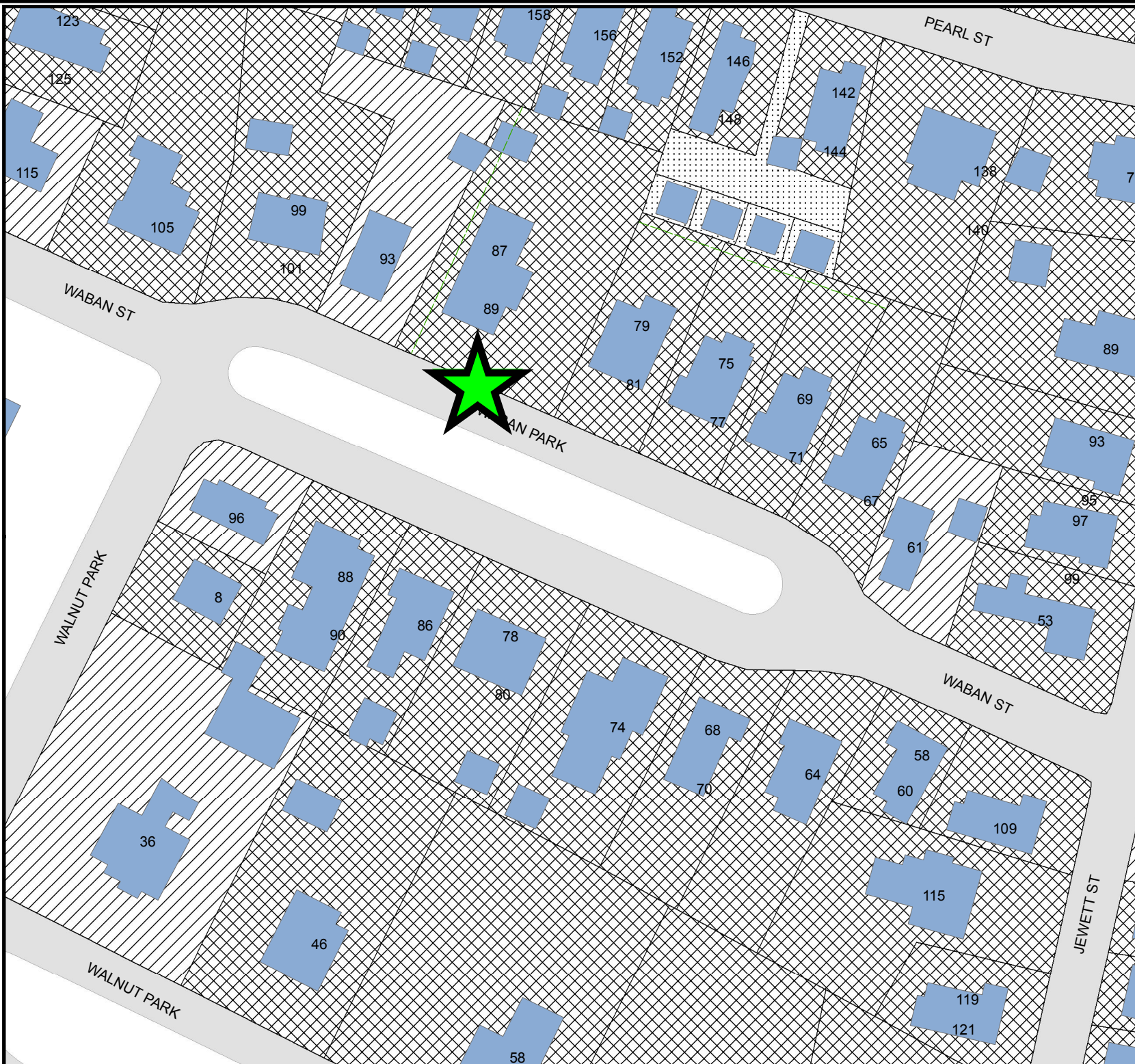
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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas G. Gagnier



Map Date: November 09, 2011

Attachment "F"



68.1'

AREA: 20082 SF +/- CALC

LOT COVER: 27.7 %

OPEN SPACE: 55.3 %

EXIST CAR

EXIST CAR

TO BE RAISED

PAVEMENT TO BE REMOVED

PATIO 29.5'

9' x 10' PARKING

PROPOSED UNIT 4

UNIT 2

PARKING 4 - 9 BY 10 NEW ADDITION

EXISTING HOUSE UNIT 1

PROPOSED UNIT 3

EXIST PAVED DRIVEWAY (10' +/-)

BACK OF WALK 100.0

WABAN STREET

TOPOGRAPHIC PLAN  
87-89 WABAN STREET  
NEWTON, MA.  
SCALE: 1 IN = 20 FT

AUG 29, 2011  
NOV 1, 2011

ESSEY ENG. & SURVEY INC  
PO BOX 226022 NEWTON LOWER FALLS  
MA 02462-0622

617-797-7342  
FAX: 617-843-6307  
ESSEY@METROCAST.NET  
FRANK.IRBRA@GMAIL.COM

LEGEND:

EXISTING CATCH BASIN

GAS CAY

WATER CAY

EXISTING SPOT GRADE 100.0





Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**283-11**  
Telephone

(617) 796-1120

Telefax

(617) 796-1142

TDD/TTY

(617) 796-1089

[www.newtonma.gov](http://www.newtonma.gov)

Candace Havens  
Director

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**MEMORANDUM**

Public Hearing Date:	November 15, 2011
Land Use Action Date:	November 22, 2011
Board of Aldermen Action Date:	December 5, 2011
90-Day Expiration Date:	December 5, 2011

DATE: November 10, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner Current Planning ET  
Alexandra Ananth, Senior Planner

SUBJECT: Petition **#283-11**, of VLADIMIR KHAYNOVSKY, for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE by enclosing an existing deck to create a bedroom increasing the Floor Area Ratio from .70 to .73 at **66 CRAGMORE ROAD**, Ward 5, Newton Upper Falls, on land known as SBL 54, 48, 18, containing approximately 12,580 sq. ft. of land in a district zoned Single Residence 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15(u)(2) of the City of Newton Rev Zoning Ord, 2007.

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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



66 Cragmore Rd.

### **EXECUTIVE SUMMARY**

The subject property is located at 66 Cragmore Road and consists of a 12,580 square foot lot improved with a single-family residence. In 2005 the petitioner completed an expansion of the house “by right,” under the dimensional standards in place at the time. The petitioner is now proposing to expand the house further by enclosing a 391 square foot deck to create a new bedroom. The proposed expansion will increase the already nonconforming FAR from .7 to .73 where .37 is allowed, requiring a special permit. Although the existing and proposed FAR is high, the Planning Department notes that this is partially due to the fact that the basement is considered a story. The proposed addition also requires a special permit for the extension of a nonconforming three-story structure due to the classification of the basement as a story. The proposed new bedroom is on what appears to be the second floor of the residence when viewed from the street (though it is technically located on the third floor). Although the expansion is located only .4 feet from the rear lot line the residence abuts an aqueduct where there is no required setback. As the nearest residence is located over 100 feet from the existing residence and the proposed project does not constitute an expansion to the footprint, the Planning Department believes the proposed addition will not negatively affect abutters.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When reviewing this petition, the Board should consider:

- Whether the proposed extension of a nonconforming structure with regard to the number of stories and FAR will be substantially more detrimental to the neighborhood than the existing structure.

#### **II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

##### **A. Neighborhood and Zoning**

The house is located in a Single Residence 2 zone and is completely surrounded by single-family uses.

##### **B. Site**

The site consists of a 12,580 triangular shaped lot that abuts an aqueduct at its rear property line.

#### **III. PROJECT DESCRIPTION AND ANALYSIS**

##### **A. Land Use**

The lot is used for a single-family residence and will continue to be used in this manner.

##### **B. Building and Site Design**

The petitioner is proposing to enclose an existing third floor deck located on the northwest corner of the house as a new bedroom. This will result in an increase of 391 square feet of gross floor area and an increase in the nonconforming FAR.

Although the new bedroom is located on what is technically the third story of the residence (because the basement is considered a story), it is located on the rear corner of the house and will be minimally visible to abutters. Due to the location of the addition and its relationship to abutters it does not appear that landscape screening needs to be added. Proposed materials will match existing.



C. Parking and Circulation

The proposed project will have no impact on parking or circulation.

IV. TECHNICAL REVIEW

A. Technical Considerations.

The Zoning Review Memorandum, dated October 4, 2011 (**SEE ATTACHMENT "A"**), provides an analysis of the proposal with regard to zoning. The existing house is a lawfully nonconforming structure with regard to number of stories and FAR. A special permit is required to increase the already nonconforming FAR from .7 to .73 where .37 is allowed. A special permit is also required to extend a structure that is nonconforming with regard to the number of stories.

B. Other Reviews.

No other reviews are required for the proposed project.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioners are seeking the following relief:

- Section 30-15(u)(2), to allow for an increase in FAR from .70 to .73 where .37 is allowed
- Section 30-21(b), to allow for an expansion of a nonconforming structure with respect to the number of stories
- Section 30-23, for site plan approval
- Section 30-24, for approval of special permit

VI. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

**ATTACHMENT A:** ZONING REVIEW MEMORANDUM DATED OCTOBER 4, 2011  
**ATTACHMENT B:** ZONING MAP  
**ATTACHMENT C:** LAND USE MAP  
**ATTACHMENT D:** VISUAL  
**ATTACHMENT E:** DRAFT BOARD ORDER



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**Attachment "A"**

Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Candace Havens  
Director

## ZONING REVIEW MEMORANDUM

Date: October 4, 2011

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning ET

Cc: Vladimir Khaynovsky, applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: Request to allow an increase in FAR

Applicant: Vladimir Khaynovsky	
Site: 66 Cragmore Road	SBL: 54048 0018
Zoning: SR2	Lot Area: 12,580 square feet
Current use: Single-family dwelling	Proposed use: Single-family dwelling

### Background:

The property at 66 Cragmore Road consists of a 12,580 square foot lot occupied by a single-family dwelling. In 2005, the applicant completed a large expansion of the then existing house which was done by right under the FAR rules at the time. The applicant now proposes to enclose an existing roof deck to create a new bedroom.

The following review is based on plans and materials submitted to date as noted below.

- Architectural floor plans, existing and proposed, by Architects 2, unsigned, unstamped, dated 7/20/11
- Side and rear elevations, existing and proposed, by Architects 2, unsigned, unstamped, dated 7/20/11
- FAR Worksheet for existing and proposed, prepared by Architects 2, unsigned, unstamped, and undated
- Site plan, signed and stamped by Bruce Bradford, Surveyor, dated 12/28/04
- Revised site plan, signed and stamped by Bruce Bradford, Surveyor, dated 8/30/11

### ADMINISTRATIVE DETERMINATIONS:

1. The property is in the SR2 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre- 1953 lot (see chart below).

SR2 Zone	Required/Allowed	Existing	Proposed
Lot Size	10,000 square feet	12,580 square feet	No change
Frontage	80 feet	230 feet	No change
Setbacks			
• Front	25 feet	25.1 feet	No change
• Side	7.5 feet	8.8 feet	No change
• Rear	0 feet*	.4 feet	No change
FAR	.37**	.70	.73
Building Height	36 feet	29.4 feet	No change
Maximum Stories	2.5	3	No change
Max. Lot Coverage	30%	27.8%	No change
Min. Open Space	50%	65%	No change

\* Rear property line is a boundary with the land owned by an aqueduct and therefore has no setback requirement

\*\* Under the FAR rules to go into effect on October 15, 2011, including the .02 bonus for an addition to an existing structure on an old lot which stays within new-lot setbacks.

- In 2005, a large by-right addition was constructed. Because the then existing structure was less than 50% demolished, the new structure was not subject to FAR standards at the time. At the time, the FAR of the property would have been approximately .49.
- The site plan that was provided for the large addition in 2004 shows a calculation of an average grade plane of 147 feet and a lower level that is exactly one half below the calculated grade plane, which met the definition of a basement. However, since that time, the Board of Aldermen adopted Ordinance No. Z-90, which required the calculation of average grade plane to be done using the length-weighted-mean method. A revised site plan using the current calculation method was submitted and shows an average grade plane of 146.5. Therefore, the basement now qualifies as a first floor. This is reflected in the number of stories and the FAR in the table above.
- The applicant proposes to enclose an existing open deck to create a new bedroom. This will result in an increase of 391 square feet of gross floor area and an increase in the nonconforming FAR from .70 to .73. The applicant must obtain a special permit from the Board of Aldermen, per Section 30-15(u)(2) to construct this addition as proposed.
- The proposed addition is also an extension of a nonconforming three story structure. To construct the addition as proposed, the applicant must obtain a special permit from the Board of Aldermen per §30-21(b).
- See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance	Density	Action Required
§30-15(u)(2)	Allow an increase in FAR from .70 to .73 where .37 is allowed.	S.P. per §30-24
§30-21(b)	Allow an extension of a structure which is nonconforming with regard to the number of stories	S.P. per §30-24



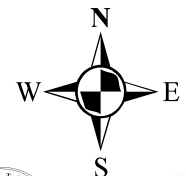
# 283-11 Zoning Map 66 Cragmore Rd. *City of Newton, Massachusetts*

**Legend**

**Contour Lines**

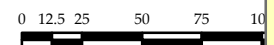
- Two Foot Contour
- Index (10 Foot) Contour
- Depression Contour
- Depression - Index Contour
- Bridge Abutment
- Culvert
- Wall

- Single Residence 2
- Multi-Residence 1
- Public Use
- Building Outlines
- Property Boundaries



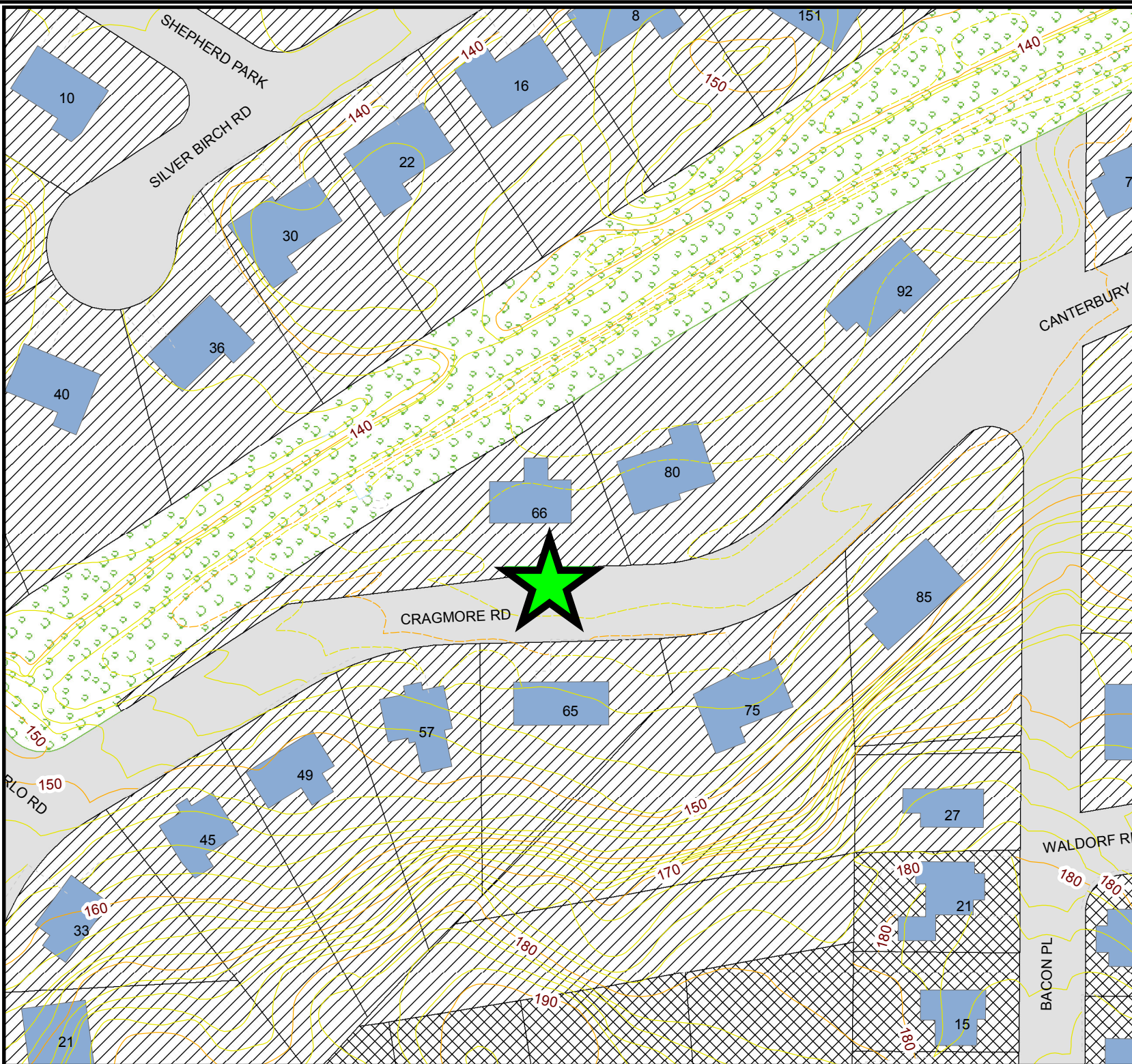
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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas G. Gagnier



Map Date: November 07, 2011

Attachment "B"





283-11  
**Land Use Map**  
**66 Cragmore Rd.**  
*City of Newton,*  
*Massachusetts*

**Legend**

**Contour Lines**

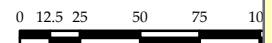
- Two Foot Contour
- Index (10 Foot) Contour
- Depression Contour
- Depression - Index Contour
- Bridge Abutment
- Culvert
- Wall

Single Family Residential  
 Multifamily Residential  
 Open Space  
 Building Outlines  
 Property Boundaries



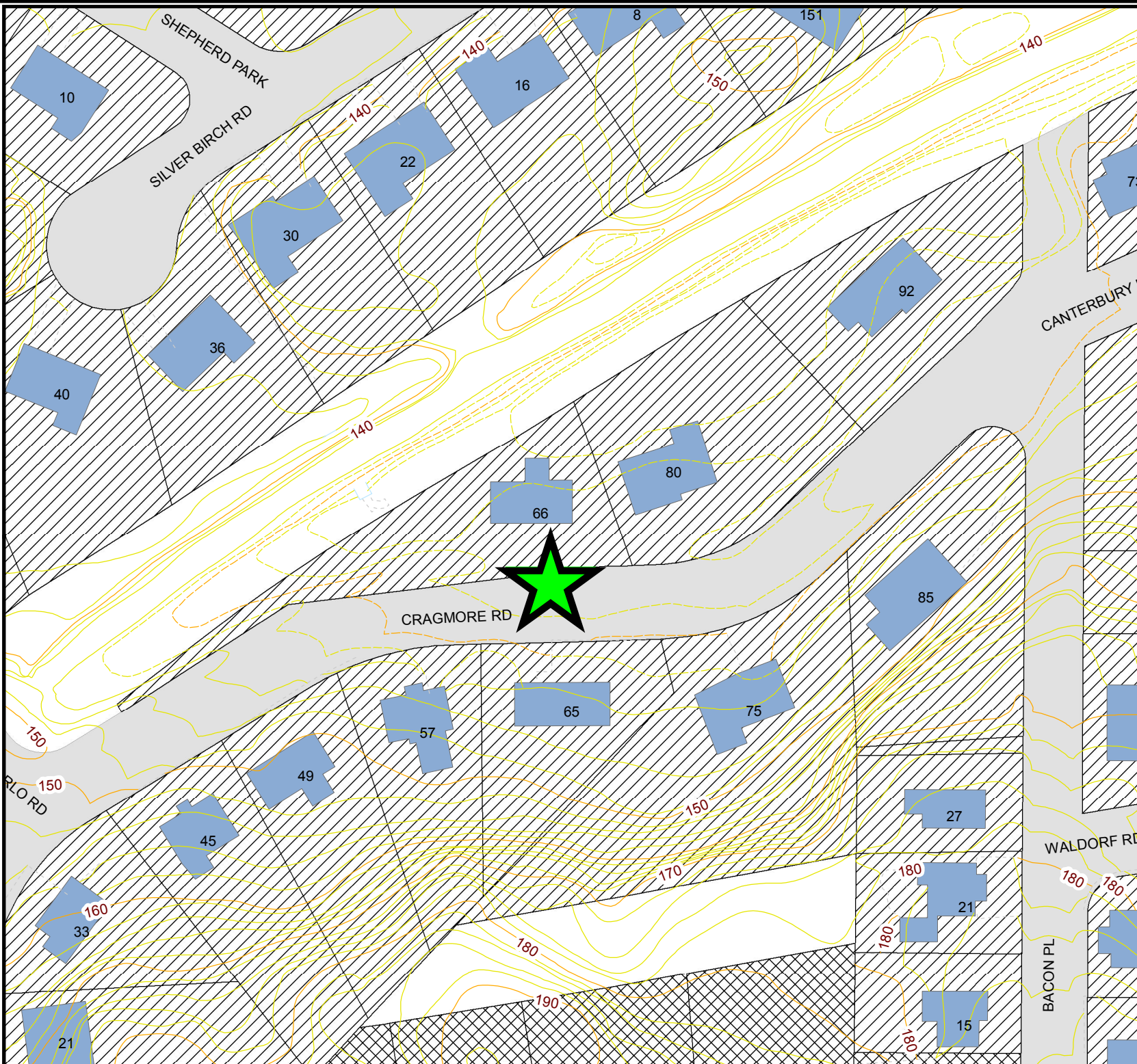
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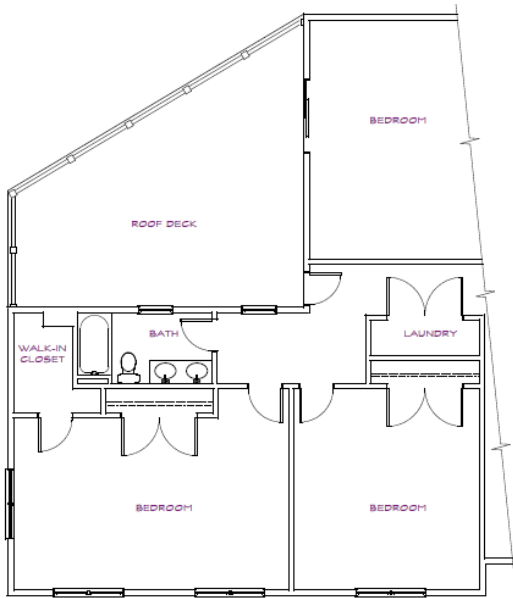
CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
 GIS Administrator - Douglas Granger



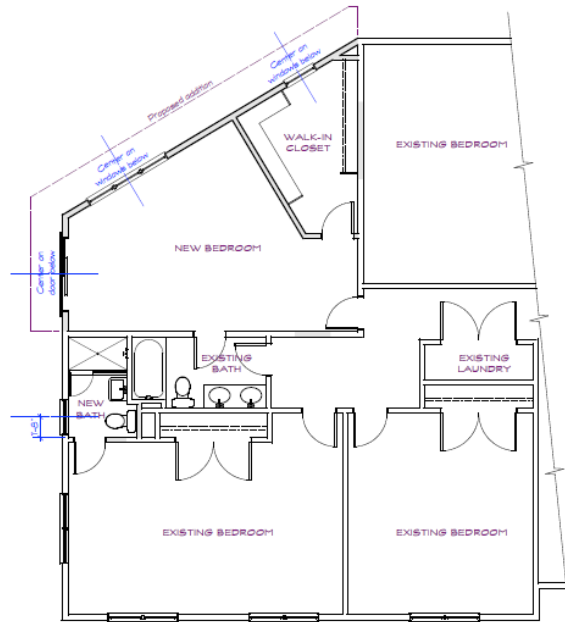
Map Date: November 07, 2014

Attachment "C"





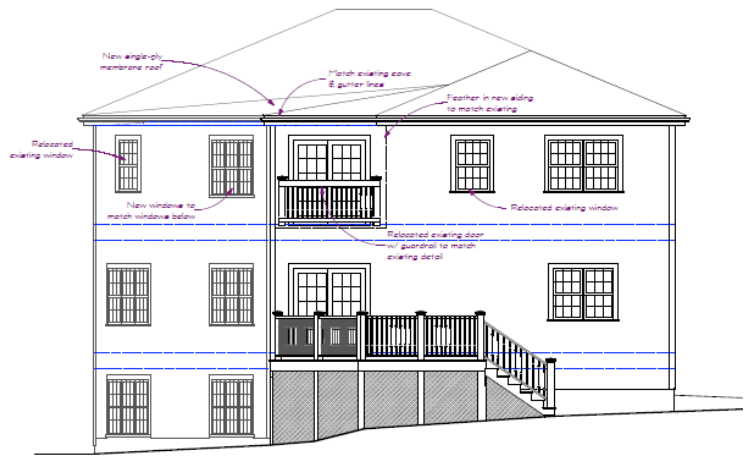
Existing Third Floor Plan



Proposed Third Floor Plan



Photo of Existing



Proposed Left Side  
Elevation

DRAFT  
#283-11

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
December 5, 2011

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN to allow an increase in FAR and an extension of a nonconforming structure, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

1. The proposed extension of a nonconforming structure will not be substantially more detrimental to the neighborhood than the existing structure for the following reasons:
  - a. The structure is nonconforming with regard to the number of stories as the basement qualifies as a first floor.
  - b. The proposed addition is located on the rear corner of the house and will be minimally visible to abutters and the property complies with dimensional standards for lot coverage and open space.
  - c. The proposed addition has been designed in keeping with the architecture and roofline of the existing house and complies with all setback requirements.

PETITION NUMBER:	#283-11
PETITIONER:	Vladimir Khaynovsky
LOCATION:	66 Cragmore Road, Section 54, Block 48, Lot 18 containing approximately 12,580 sq. ft. of land
OWNER:	Vladimir Khaynovsky
ADDRESS OF OWNER:	66 Cragmore Road, Newton, MA 02464
TO BE USED FOR:	Enclosing deck to create new bedroom
CONSTRUCTION:	Wood frame, exterior to match existing

EXPLANATORY NOTES: §30-15(u) to increase FAR from .7 to .73 where .37 is allowed; §30-21(b) to extend a nonconforming structure with regard to the number of stories; §30-23 for site plan approval; and §30-24(d) for special permit approval

ZONING: Single Residence 2 District

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with
  - Site Plan, signed and stamped by Bruce Bradford, Professional Land Surveyor, dated 8/30/11
  - Architectural floor plans, existing and proposed, by Architects 2, unsigned, unstamped, dated 7/20/11
  - Side and rear elevations, existing and proposed, by Architects 2, unsigned, unstamped, dated 7/20/11
2. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
  - a. recorded a certified copy of this Board Order for the approved special permit/site plan with the Registry of Deeds for the Southern District of Middlesex County.
  - b. filed a copy of such recorded Board Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
3. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.





Setti D. Warren  
Mayor

## City of Newton, Massachusetts

### Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

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**137-10(3)**  
(617) 796-1120  
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(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

Candace Havens  
Director

Public Hearing Date:	November 15, 2011
Land Use Action Date:	November 22, 2011
Board of Aldermen Action Date:	December 5, 2011
90-Day Expiration Date:	December 5, 2011

DATE: November 10, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning<sup>ET</sup>  
Derek Valentine, Senior Planner

SUBJECT: Petition #137-10(3) SHARAD GANDBHIR petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure and to allow three parking spaces closer than five feet from the street and within the front setback at 298-300 ADAMS STREET, Ward 1, on land known as SBL 12, 2,9C, containing 11,529 square feet of land in a district zoned MULTI-RESIDENCE 1, REF: Section 30-24, 30-23, 30-9(h)(1),30-19(g)(1)and(m) of the City of Newton Revised Zoning Ordinance, 2007.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



### **EXECUTIVE SUMMARY**

The property is currently improved with a two-family residence and a detached accessory structure at the rear of the property. The detached structure has been vacant since at least 1987. It was at this time that a two-family residence was constructed at the front of the lot. The owner would like to renovate the rear structure and seeks a special permit to create an accessory apartment in that structure. This is the third time that the petitioner has submitted for a zoning review, incorporating departmental feedback with each subsequent submission. A public hearing was held on the most recent submission, which was withdrawn when the petitioner was not able to meet the requirements of the Newton Fire Department. The current proposal differs from prior submissions in that the rear structure will now have a fire suppression sprinkler system in lieu of direct access for emergency vehicles. The 3 foot wide concrete walkway from Adams Street to the rear structure will also be required to remain in place for emergency access.

Since the accessory structure is already in place, the Planning Department believes that reusing the existing structure will have a minimal impact on the neighborhood. The proposed reuse is preferable to allowing the structure to remain vacant while deteriorating to the point where it could potentially become a public nuisance or hazard. Furthermore, modest-sized units add to the diversity of housing options available in Newton.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When hearing this request, the Board should consider whether:

- 1) The proposed accessory apartment in a detached structure will not adversely affect the neighborhood for the following reasons:
  - a. The structure already exists and no significant exterior alterations are proposed.
  - b. Reusing the existing structure ensures that it will be maintained and will not become a nuisance.
  - c. The proposal is consistent with the *2007 Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.
- 2) Locating more than two parking spaces within the front setback and three parking spaces less than five feet from the front lot line is appropriate since literal compliance with this requirement is not practicable due to the topography of the lot, which slopes steeply upward from the street.

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located on Adams Street between Washington Street and Wiltshire Road. It is within a vast area east of Adams Street zoned Multi-Residence 1. Across Adams Street from the subject site is a large area zoned Multi-Residence 2. Land use in the area is primarily single- and multi-family residential, with the exception of Our Lady of Help Christian Church to the west.

### B. Site

The site consists of 11,529 square feet of land that slopes up from the street. A 3,312 square-foot duplex with garage-under parking is at the front of the property, facing Adams Street. Both units in the duplex have two-bedrooms. The lot is "L"-shaped and has an existing accessory building at the rear of the property, which has not been used for decades. A concrete walkway leads from the parking area near the street to the accessory structure.

## III. PROJECT DESCRIPTION AND ANALYSIS



Existing two-family



Existing accessory structure at the rear of the property

### A. Land Use

The property is being used as a two-family residence. By obtaining a special permit, the petitioner would like to maintain the two-family use in the main structure and add an accessory apartment in the accessory building. The owner will occupy one of the three units as his primary residence once renovations are complete and will be required to do so for the duration of the special permit.

### B. Building and Site Design

There are no exterior changes proposed to the accessory building at this time. A bituminous pavement area to the northeast of the accessory building will be removed, decreasing the overall impervious coverage on site. This will bring the property in compliance with open space requirements.



The proposed accessory apartment will have 1,120 square feet of living space. There is a large storage room connected to the existing kitchen of the building. If this room were included in the floor area calculations, the structure would exceed the maximum square footage for an accessory apartment. The Commissioner of Inspectional Services has determined that if direct access from the living space is eliminated, this storage room does not need to be included in the square footage calculation. The Planning Department recommends a condition requiring direct access from the accessory unit to the storage area be eliminated prior to the issuance of a certificate of occupancy.

C. Parking and Circulation

The proposed use of the property requires a total of five parking spaces on-site. The petitioner will provide three parking spaces in the existing driveway in front of the main residential building and two parking spaces in the garages located under the two-family house. Three of these spaces will be located closer than five feet from the street and within the front yard setback. Relief is required to locate more than two parking spaces in the setback, and to locate any parking spaces within five feet of the pavement edge of the street.

D. Landscape Screening

Since the structure is already in place, the visual impact of this petition on the surrounding neighborhood will be negligible. No additional landscaping or screening is required.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15): The Zoning Review Memorandum, dated October 6, 2011 (**SEE ATTACHMENT "A"**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting permission to renovate an accessory structure in order to create an accessory apartment. Newton Zoning Ordinance Section 30-9(h)(1) allows for this use by special permit. The petitioner also needs a waiver to locate three parking spaces within the front setback and less than five feet from the street under Sections 30-19(g)(1) and 30-19 (m).
- B. Comprehensive Plan: This petition will help to preserve the existing housing stock while increasing the diversity of housing options available in the City. It also allows adaptive reuse of an historic structure which might otherwise deteriorate through disuse.
- C. Engineering Review: Since there is a decrease in impervious coverage, site plan review by the Engineering Department is not required.
- D. Fire Department Review: The Newton Fire Department has approved the proposal

for fire access, provided that that pedestrian access to the rear structure be maintained and kept clear year round and that the accessory building be equipped with a fire suppression sprinkler system.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum (***SEE ATTACHMENT "A"***), the petitioners are seeking the following approvals or relief:

- Section 30-19(h)(1) to allow an accessory apartment in a detached structure
- Sections 30-19(g)(1) and 30-19(m) to allow more than two parking spaces in the front setback and parking spaces less than five feet from the street

VI. PETITIONERS' RESPONSIBILITIES

The proposed accessory apartment should be brought into compliance with all applicable safety and building codes.

**ATTACHMENTS**

**Attachment A:** Zoning Review Memorandum dated October 6, 2011

**Attachment B:** Zoning Map

**Attachment C:** Land Use Map

**Attachment D:** Draft Board Order #137-10(3)

## ATTACHMENT A



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

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Candace Havens

## ZONING REVIEW MEMORANDUM

Date: October 6, 2011

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning ET

Cc: Sharad Gandbhir, applicant  
Bryan Parmenter, Surveyor on behalf of applicant  
Ouida Young, Associate City Solicitor  
John Lojek, Commissioner of Inspectional Services

RE: Request for an accessory apartment in a detached structure

Applicant: Sharad S. Gandbhir	
<b>Site:</b> 298R Adams Street	<b>SBL:</b> Section 12, Block 2, Lot 9C
<b>Zoning:</b> MR1	<b>Lot Area:</b> 11,529 square feet
<b>Current use:</b> Two-family residence with a vacant detached structure	<b>Proposed use:</b> Two-family residence with an accessory apartment in the detached structure

### Background:

The subject property consists of an 11,529 square foot lot currently improved with a two-family residence and a detached structure at the rear of the lot. According to the applicant, the rear structure has been vacant for many years. The owner would like to renovate the existing detached structure to create an accessory apartment. Three previous zoning memos have been written on this same project (March 1, 2010, April 29, 2010 and December 1, 2011). However, the Fire Department required changes to the previous proposals to allow for fire truck access that required substantial alteration to the site plan and petition proposal. The Fire Department is now satisfied with the plans submitted by the applicant. This memo reflects these new plans and supersedes the previous memos.

The following review is based on plans and materials submitted to date as noted below.

**Plans and materials reviewed:**

- Architectural Drawings, signed by Anand Lele, engineer; dated 3/17/10
  - First Floor Plan
  - Second Floor Plan
- Existing Site Plan, signed by Bryan Parmenter, surveyor; dated 10/19/10
- Revised Proposed Site Plan, including zoning table, signed by Bryan Parmenter, surveyor; dated 9/28/11
- Letter from Paul Chagnon, Assistant Fire Chief, stating that the applicant's new plans conformed with Fire Department requirements, dated 8/16/11

**Administrative Determinations:**

1. The applicant proposes to renovate and re-inhabit an existing vacant structure as an accessory apartment. The applicant must obtain a special permit from the Board of Aldermen to allow an accessory apartment in a detached building in the MR1 zone, per Section 30-9(h)(1).
2. The existing accessory structure has been vacant and unused since at least 1987, the year in which the primary two-family residence at the front of the lot was constructed. The table below describes the dimensional requirements of an accessory structure. The structure is a legal nonconforming accessory structure, with 1,162 square feet of ground floor area where no more than 700 square feet are allowed. No changes to the structure are proposed.

<b>§30-15(m)</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Ground floor area	700 square feet	<b>1,162 square feet</b>	<b>No change</b>
Setbacks—accessory structure	5 feet	9.1 feet	No change
Stories	1.5	1.5	No change
Height	22 feet	Not provided*	No change

\* Not provided by applicant, as no changes are proposed

3. The subject site is comprised of a lot created after December 7, 1953 and is subject to post-1953 “new lot” density and dimensional controls applicable to lots in the MR1 zone.

<b>MR1 Zone</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
<b>Lot size</b>	10,000 sq. ft.	11,529 sq. ft.	No change
Frontage	80 feet	100.5 feet	No change
Max. Lot Coverage	30%	23.5%	No change
Min. Open Space	50%	<b>49.2%</b>	52.4%

The proposed site plan, including described removal of bituminous pavement, would make the site's open space conforming with the requirement of Section 30-15, Table 1.

4. Section 30-9(h)(1)(c) limits the size of space the accessory apartment to be a minimum of 400 square feet and a maximum of 1,200 square feet. The applicant submitted a floor plan that

calculates the square footage of the accessory apartment as 1,120 square feet. The plans designate an area of the existing accessory structure as “storage.” This storage cannot be included in the accessory apartment because the square footage would be higher than allowed by the Zoning Ordinance. Therefore, the door from the storage area to the proposed kitchen must be eliminated so that the storage is not internally connected to the apartment.

5. Section 30-19(d)(19) requires one on-site parking stall for an accessory apartment. The existing two-family dwelling on the front of the lot requires four parking spaces (two per dwelling unit per Section 30-19(d)(1)). Therefore, the total parking requirement for the lot is five spaces. Section 30-19(g)(1) allows one parking space per dwelling unit within the front or side setback. “However, in no case shall a parking stall be setback less than five (5) feet from the street.” The applicant submitted a site plan showing the proposed location of these required spaces. On the proposed plan, three parking spaces are located in the front setback, where two are allowed by-right. All three of these spaces are located less than five feet from the front property line. The applicant must obtain a special permit under Section 30-19(m) to allow the third parking stall within the front setback as well as to permit three parking spaces closer than five feet to the street.

6. See “Zoning Relief Summary” below.

Ordinance	Zoning Relief Summary	Action Required
	<i>Use</i>	
§30-9(h)(1)	Allow an accessory apartment in a detached structure	<i>SP per §30-24</i>
	<i>Parking</i>	
§30-19(g)(1), §30-19(m)	Allow more than two parking spaces in the front setback and three parking spaces less than five feet from the front lot line	<i>SP per §30-24</i>

# 298-300 Adams St

City of Newton,  
Massachusetts



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100  
Feet

MAP DATE: February 10, 2011





# Land Use

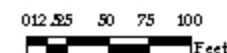
## 298-300 Adams St

City of Newton,  
Massachusetts



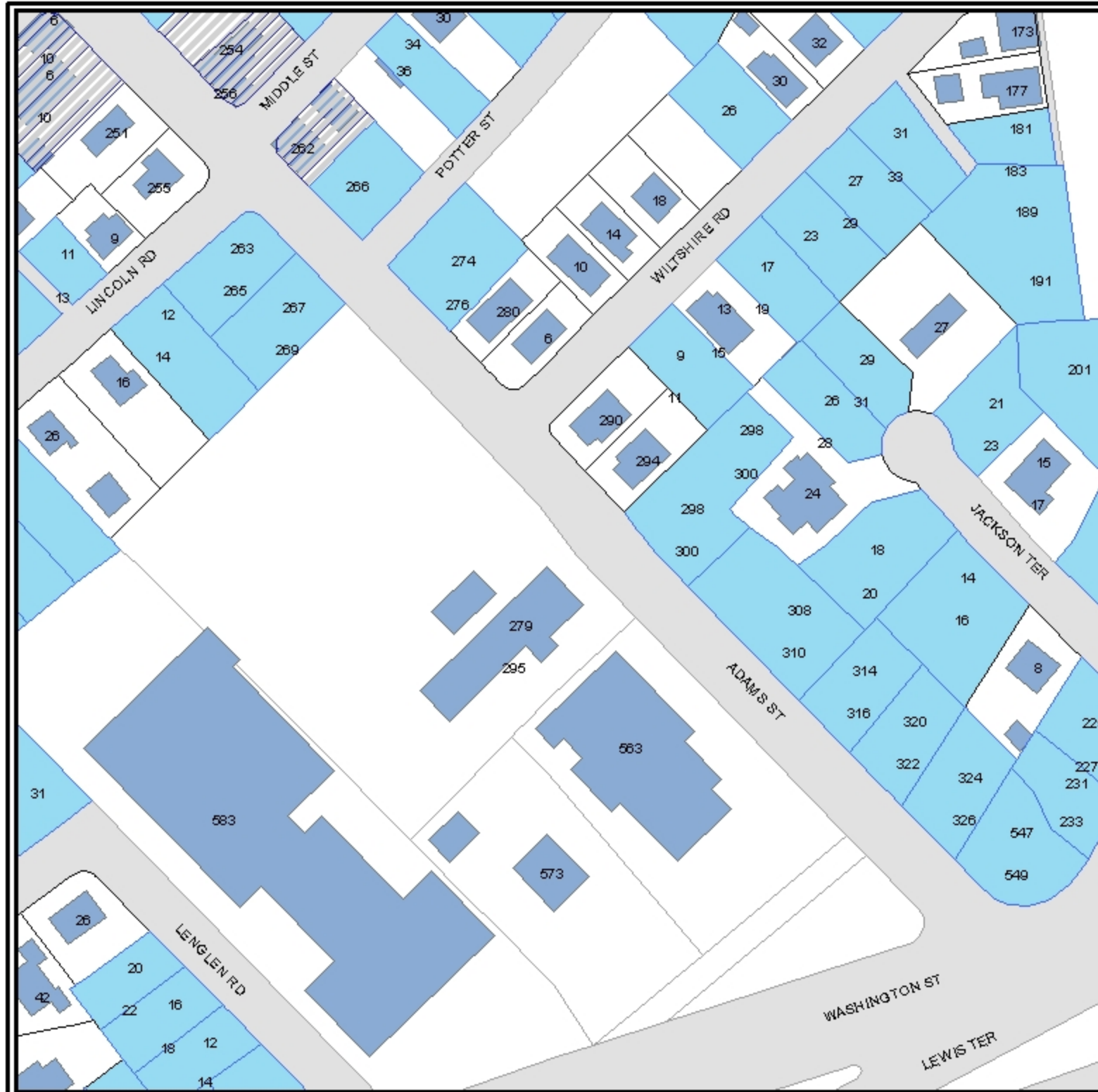
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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Seth D. Warren  
GIS Administrator - Douglas Greenfield



**MAP DATE: February 10, 2011**

ATTACHMENT C



**ATTACHMENT D****DRAFT**

#137-10(3)

CITY OF NEWTON  
IN BOARD OF ALDERMEN

November 15, 2011

**ORDERED:**

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure, to locate three parking spaces closer than five feet from the street and within the front setback in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan.

The Board finds that:

- 1) The proposed accessory apartment in a detached structure will not adversely affect the neighborhood for the following reasons:
  - a. The structure already exists and no significant exterior alterations are proposed.
  - b. Reusing the existing structure ensures that it will be maintained and will not become a nuisance.
  - c. The proposal is consistent with the *2007 Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.
- 2) Locating more than two parking spaces within the front setback and three parking spaces less than five feet from the front lot line is appropriate since literal compliance with this requirement is not practicable due to the topography of the lot, which slopes steeply upward from the street.

PETITION NUMBER: #137-10(3)

PETITIONER: Sharad Gandbhir

LOCATION: 298-300 Adams Street, Ward 1, on land known as Sec 12, Blk 2, Lot 9c, containing approx. 11,529 sf of land

OWNER: Sharad Gandbhir Trust

ADDRESS OF OWNER: P.O. Box 29, Templeton, MA 01468

TO BE USED FOR: Accessory Apartment

CONSTRUCTION: Wood-frame

EXPLANATORY NOTE: Section 30-9(h)(1) to allow an accessory apartment in a detached structure, and Sections 30-19(g)(1) and 30-19(m) to allow more than two parking spaces in the front setback and parking spaces less than five feet from the street.

ZONING: Multi-Residence 1 District.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping, and other site features shall be located and constructed consistent with the following plans:
  - “Plan of Land, 298-300, 298 R Adams Street”, dated September 28, 2010, and revised May 1, 2011, signed and stamped by Brian G. Parmenter, Professional Land Surveyor.
  - “298 R Adams Street Floor Plans”, dated March 17, 2010, signed and stamped by Anand D. Lele, Professional Engineer.
2. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until the petitioner has:
  - a. Recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.

- b. Filed a certified copy of such recorded notices with the Clerk of the Board, the Inspectional Services Department and the Department of Planning and Development.
- 3. No portion of the building pursuant to this SPECIAL PERMIT and SITE PLAN APPROVAL shall be occupied until the petitioner has:
  - a. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development, a statement by a registered engineer certifying compliance with Condition #1.
  - b. Access from the accessory apartment to the unfinished storage room should be eliminated and this space shall not be used as part of the apartment.
  - c. The accessory apartment should be brought into compliance with all applicable building and safety codes, including the addition of fire sprinklers as required by the Newton Fire Department.
- 4. A 3 foot wide concrete walkway shall be installed on the west side of the property to provide emergency access to the accessory structure. This walkway shall be maintained in passable condition year round for the duration of this special permit.
- 5. The property must be owner-occupied and the owner must submit a yearly affidavit attesting to this condition per Section 30-8(d)(2) of the City Zoning Ordinance. The principal dwelling and the accessory dwelling shall not be held in separate ownership, and the owner must live in either the accessory apartment or the principal dwelling.

The Law Office of

## GARY S. SINCLAIR

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Topsfield, MA 01983

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(978) 274-1953 fax  
garysinclairlaw@verizon.net

November 2, 2011

City of Newton  
Clerk of the Board of Aldermen  
1000 Commonwealth Avenue  
Newton, MA

Dear Clerk of the Board,

On behalf of my client, Newton Community Service Center (NCSC), I respectfully request to immediately withdraw our special permit application, submitted on September 28, 2011, concerning a parking waiver for 429 Cherry Street, without prejudice.

NCSC hopes to place the building under agreement soon and the prospective buyers intend a different use, which would affect the number of required parking stalls and render the current special permit request irrelevant.

Thank you very much for your help on this matter.

Yours truly,

/s/ *Gary S. Sinclair, Esq.*

Gary S. Sinclair, Esq.

cc: Alexandra Ananth

11 NOV -2 A 3 59  
CITY CLERK  
NEWTON, MA 02159

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277-10(2)

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Senior Counsel:  
Martin I. Estner

From the desk of:  
Jason A. Rosenberg  
[JRosenberg@rfglawyers.com](mailto:JRosenberg@rfglawyers.com)

October 11, 2011

Theodore Hess-Mahan, Chairman  
Land Use Committee  
Board of Aldermen  
Newton City Hall  
Newton, MA 02459

**Re: Extension of Special Permit No. 277-10 / Approval Date December 20, 2010**  
**Petitioner: Jenni Marie One LLC and Jenni Marie Two LLC c/o Alfonso DeVito, Manager**  
**Location: 152 Adams Street, Section 14, Block 14, Lots 33 and 34**

Dear Chairman Hess-Mahan:

I represent Jenni Marie One LLC and Jenni Marie Two LLC c/o Alfonso DeVito, Manager. **My client is requesting under section 30-24(c)(4) of the City of Newton Zoning Ordinances that the Board of Aldermen extend the one-year period of time, within which substantial use or construction must have begun, for an additional one year.**

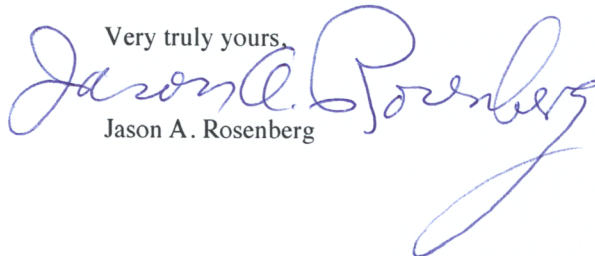
In support of this request, my client states as good cause for the extension the following:

Since receiving the special permit from the City of Newton, the petitioner/owner has diligently proceeded forward with the initial phases of the implementation of the special permit. My client had ordered and paid for the preparation of, and had received construction and engineering plans as required. However, the current financial crisis in the mortgage industry and the slumping housing and small commercial space markets have created an unanticipated financial restraint on beyond my client's control. My client has been making a detailed review with consultants as to the economic viability of the project as presently designed and approved, and which precludes obtaining permits and commencing construction prior to the expiration of the initial one year which expires December 19, 2011.

As you, the Land Use Committee and the Board of Aldermen will hopefully conclude, there is good cause for the extension of time in which to exercise the special permit for the additional year.

Please feel free to call me with any questions you may have.

Very truly yours,



Jason A. Rosenberg

JAR:arj

Cc Members of the Land Use Committee  
President Scott F. Lennon  
Alderman Allan Ciccone, Jr  
Eve Tapper, Chief Planner for Current Planning  
Alexandra Ananth, Senior Planner  
Linda Finucane, Office of Clerk of the Board of Aldermen